

Progress in the protection of women's reproductive rights in Latin America

The case of *Artavia Murillo et al v. Costa Rica*

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The November 2012 decision by the Inter-American Court of Human Rights (the Court) regarding the case of *Artavia Murillo et al. v. Costa Rica* generated landmark jurisprudence on women's human rights. The ruling provide grounds for challenging laws in other countries that refer to absolute protection of life from the moment of conception, criminalizing women's access to safe and legal abortion. The decision also established states' duty "to regulate those aspects it considers necessary for the implementation of IVF, taking into account the human rights principles established in this Judgment" (paragraph 337).

Some relevant aspects of this decision for women's right to private life, reproductive autonomy, personal integrity and access to reproductive health services include:

- **The Court stated that "the right to private life is related to: (i) reproductive autonomy, and (ii) access to reproductive health services, which includes the right to have access to the medical technology necessary to exercise this right.** The right to reproductive autonomy is also recognized in Article 16(e) of the Convention for the Elimination of All Forms of Discrimination against Women, according to which women enjoy the right "to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means that enable them to exercise these rights." This right is violated when the means by which a woman can exercise the right to control her fertility are restricted (paragraph 146).
- **The Court's judgment concluded that it is not admissible to grant the status of person to the embryo** (paragraph 223) and that the protection of the right to life under Article 4 (Right to life) of the American Convention is not absolute, but rather gradual and incremental according to its development (paragraph 264).
- **The Court also established that the rights to private life and to personal integrity are also directly and immediately linked to health care.** The lack of legal safeguards that take reproductive health into consideration can result in a serious impairment of the right to reproductive autonomy and freedom. Therefore, there is a connection between personal autonomy, reproductive freedom, and physical and mental integrity (paragraph 147).

Case summary

The Artavia Murillo case was brought to the Inter-American Court of Human Rights in 2011, on behalf of nine Costa Rican infertile couples, by the Inter-American Commission on Human Rights (IACHR). The claim argued that when in vitro fertilization (IVF) was declared unconstitutional in the year 2000, the State of Costa Rica denied these infertile couples alternative means to have the children they wanted, resulting in a violation of their rights to

private and family life. The evidence presented by the witnesses showed gender-based discrimination as well as discrimination toward people who did not have the financial means to travel to other countries to obtain IVF. Presenting its case to the Court, the IACHR focused on the violations to the rights of these couples, in particular, the right to private and family life, the right to the protection of family and equality before the law, respectively protected by Articles 11(2), 17(2) and 24 of the American Convention on Human Rights (ACHR) (Zegers-Hoschild, 2013).

American Convention on Human Rights: Key articles of relevance

Art. 11 (2) Protection of honor and dignity / Right to privacy. No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation.

Art. 17 (2) Rights of the family. The right of men and women of marriageable age to marry and to raise a family shall be recognized, if they meet the conditions required by domestic laws, insofar as such conditions do not affect the principle of nondiscrimination established in this Convention.

Art 24. Right to equal protection. All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.

There is no absolute protection of life in gestation

Of particular importance was the Court's analysis of the matter that there is no absolute protection of life in gestation. An approach that favors the rights of embryos over women's rights has negative effects that impact the ability of women to exercise their rights to life, health, liberty and reproductive autonomy, equality and non-discrimination, sexual and reproductive self-determination, and the right to reproductive health. Unconditional protection of life in gestation can generate limitations or barriers to exercising human rights, contrary to what has been established by international human rights treaties.

The decision by the Constitutional Chamber of the Costa Rican Supreme Court of Justice declaring IVF unconstitutional was based on the idea that human embryos are created in the process of IVF and many of them invariably die in the process, which the Constitutional chamber regarded as a violation of the right to life as stated in Article 4(1) of the ACHR: "Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life." The Court listened to expert testimony which highlighted that "[t]he process that generates human life includes embryonic death as part of a natural and necessary process" (Artavia Murillo et al., paragraph 310).

Of great importance for reproductive rights was the analysis of competing rights presented in the case: the right to life of embryos and the rights of infertile Costa Rican couples to private and family life, to raise a family, and to equality and non-discrimination (Zegers-Hochschild, 2013).

In considering the decision of the Constitutional Chamber of the State of Costa Rica, the Court approached the matter by explaining the references to fertilization and conception: “the Court underscores that the scientific evidence agrees in making a difference between two complementary and essential moments of embryonic development: fertilization and implantation. The Court observes that it is only after completion of the second moment that the cycle is concluded, and that conception can be understood to have occurred”(paragraph 186). In addition, in regards to the term “conception,” the Court interpreted that it “cannot be understood as a moment or process exclusive of a woman’s body, given that an embryo has no chance of survival if implantation does not occur”(paragraph 187).

On the matter of the legal status on an embryo, the Court determined that “...the regulatory trends in international law do not lead to the conclusion that the embryo should be treated in the same way as a person, or that it has a right to life” (paragraph 253).

With regard to the right to life, the Court considered the use of the words “in general” in Article 4 of the ACHR and concluded “that the protection of the right to life under this provision is not absolute, but rather gradual and incremental according to its development, since it is not an absolute and unconditional obligation, but entails understanding that exceptions to the general rule are admissible” (paragraph 264).

The right to nondiscrimination

The Court opted not to analyze the case in light of Article 24 (Right to equal protection); instead it focused on indirect discrimination based on disability, gender, and financial situation (Zegers-Hoschild, 2013). Moreover, the Court found that “[e]ven though the ban on IVF is not expressly addressed at women, and thus appears neutral, it has a disproportionately negative impact on women” (paragraph 299). At the same time, the Court took into account that the ban on IVF in Costa Rica resulted in discrimination toward people without the financial resources to travel to other countries and obtain IVF.

American Convention on Human Rights: Articles relevant to women’s reproductive rights

Article 5. Right to personal integrity, indicates: (1) *Every person has the right to have his physical, mental, and moral integrity respected.*

Article 7. Right to personal liberty, indicates: (1) *Every person has the right to personal liberty and security.*

Excerpts from the Decision relevant to women’s reproductive rights:

RIGHT TO PRIVATE AND FAMILY LIFE AND RIGHT TO PERSONAL INTEGRITY in relation to personal autonomy, sexual and reproductive health, the right to enjoy the benefits of scientific and technological progress, and the principle of non-discrimination.

- Articles 5 (1), 11(2), 17(2) and 24, in relation to Article 1(1) of the American Convention

“... it prohibits any arbitrary or abusive interference with the private life of the individual, indicating different spheres of this, such as the private life of the family ... the private sphere is characterized by being exempt from and immune to abusive or arbitrary interference or attacks by third parties or by public authorities¹” (paragraph 142).

“... the concept of private life encompasses aspects of physical and social identity, including the right to personal autonomy, personal development and the right to establish and develop relationships with other human beings and with the outside world. The effective exercise of the right to private life is decisive for the possibility of exercising personal autonomy on the future course of relevant events for a person’s quality of life” (paragraph 143).

“... the right to private life is related to: (i) reproductive autonomy, and (ii) access to reproductive health services, which includes the right to have access to the medical technology necessary to exercise this right. The right to reproductive autonomy is also recognized in Article 16(e) of the Convention for the Elimination of All Forms of Discrimination against Women, according to which women enjoy the right ‘to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means that enable them to exercise these rights’” (paragraph 146).

“... every person has the right to organize, in keeping with the law, his or her individual and social life according to his or her own choices and beliefs” (paragraph 142).

“[There have been] serious impacts of the lack of medical care or problems of accessibility to certain health procedures” (paragraph 147). As a result, the Court expressed “the rights to private life and to personal integrity are also directly and immediately linked to health care. The lack of legal safeguards that take reproductive health into consideration can result in a serious impairment of the right to reproductive autonomy and freedom. Therefore, there is a connection between personal autonomy, reproductive freedom, and physical and mental integrity” (paragraph 147).

“... reproductive rights embrace certain human rights that are already recognized in national laws, international human rights documents and other relevant UN consensus documents. These rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and

¹ Cf. *Case of the Ituango Massacres v. Colombia. Preliminary objection, merits, reparations and costs.* Judgment of July 1, 2006 Series C No. 148, para. 194, and *Case of Atala Riffo and daughters v. Chile. Merits, reparations and costs.* Judgment of February 24, 2012. Series C No. 239, para. 161.

reproductive health” (paragraph 148). Moreover, it emphasized the commitment made in the Declaration of the Fourth World Conference on Women to guarantee equality and access to health for men and women (paragraph 149).

“... the right to private life and reproductive liberty is related to having access to the medical technology necessary to exercise that right” (paragraph 150). Furthermore, the Court stated “the right to have access to scientific progress in order to exercise reproductive autonomy and the possibility to found a family gives rise to the right to have access to the best health care services in assisted reproduction techniques, and, consequently, the prohibition of disproportionate and unnecessary restrictions, *de iure or de facto*, to exercise the reproductive decisions that correspond to each individual” (paragraph 150).

References

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Additional resources

Amicus Curiae in the case of *Artavia Murillo et al (in vitro fertilization) vs. Costa Rica*. Legal arguments related to the analysis of legal problems presented by civil organizations dedicated to the defense of human rights in Latin America: Asociación por los Derechos Civiles (ADC)/Argentina; CEDES/Argentina; Centro de Estudios Legales y Sociales (CELS)/Argentina; Ipas; Grupo de Información en Reproducción Elegida (GIRE)/Mexico; La Mesa por la Vida y la Salud de las Mujeres (La Mesa)/Colombia. Available in Spanish at:

<http://colegiodebioetica.org.mx/wp/wp-content/uploads/2012/10/Amicus-Curiae-Caso-Artavia-Murillo-y-otros-fecundacion-in-vitro-vs-Costa-Rica.pdf>

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